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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,461	12/31/2003	L. Warren Collier IV	K-C 17983	3946

7590 01/18/2006

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EXAMINER

YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/749,461

Applicant(s)

COLLIER ET AL.

Examiner

Sam Chuan C. Yao

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 21-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I (claims 1-20) in the reply filed on 11-21-05 is acknowledged and is found to be persuasive. However, the restriction requirement is still maintained for the following reason: the inventions are distinct because the process as claimed can be used to make other and materially different product such as making a web which has a formation index averaging below 30 on the top side of the web or the product as claimed can be made by another and materially different process such as heating the filaments before they are deposited onto a forming member.

Note: "Even though product-by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production." MPEP 2113.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is indefinite because it is unclear how this claim further limit claim 1, since claim 1 already requires pattern bonding a web. This claim appears to be a redundant claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8 and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terakawa et al (US 5,302,220) in view of Stokes et al (US 5,622,772) or Shelley et al (US 2002/0089079 A1), and optionally as evidence from the teachings of Varona (US 5,679,042).

With respect to claims 1-2 and 4, Terakawa et al, drawn to making a bulky non-woven web, substantially teaches the process recited in the claims (col. 2 line 35 to col. 68; example 1). While Terakawa et al does not explicitly state that the fibers are heated to a *"temperature sufficient to induce a relaxation of molecular orientation of one side of the fiber"*, such is taken to naturally flow from the teachings of Terakawa et al. Otherwise, how would the *"composite fibers"* in the process of Terakawa et al shrink and crimp during the heating and cooling operations. Moreover, relaxation of oriented/drawn fibers by heating thereby inducing the fibers to shrink is a known natural characteristic of thermoplastic polymeric fibers as evidence from the teachings of Varona (col. 1 lines 7-17; col. 1 lines 44-51; col. 5 lines 21-50).

While Terakawa et al does not explicitly characterize a process of blowing a fiber web using an air stream blower as *"controlling or minimizing the forces which*

*tend to impede crimping of fibers*", this blowing operation is taken to naturally control or minimize the forces which tend to impede crimping of fibers because this operation is expected to at least spread/loosen the fibers within the web. It directly follows that, in light of the similarity of the production process of Terakawa et al and the claimed invention, the fibers must naturally form crimp in the Z-direction in the process of Terakawa et al.

Terakawa et al differs from the claimed invention in that Terakawa et al does not teach pattern bonding a fiber web. However, such would have been obvious in the art, because it is conventional in the art to either pattern point bond or through-air bond a high loft web comprising crimped bi-component fibers as exemplified in the teachings of Stokes et al (abstract; col. 5 line 66 to col. 6 line 22; figures 2-3) or Shelley et al (abstract; numbered paragraph 46, 51 & 55).

With respect to claim 3, it is a common practice in the art to provide a carrier web to a fibrous web to provide support to the fibrous web during transport, for this reason, this claim would have been obvious in the art.

With respect to claim 5, one in the art would have determined, by routine experimentation, to determine a suitable amount of pattern bonding surface area for the desired end-use of a resultant application. Moreover, the recited amount of pattern bonding surface area is conventional in the art.

With respect to claim 6, spiral pattern bonding a fibrous web is conventional in the art.

With respect to claim 7, while it is disclosed in the Terakawa et al patent for a density range of a finished high loft web to be 0.01-0.05 g/cm<sup>3</sup>(col. 3 lines 62-68), Terakawa et al is silent on the weight/area of the web. However, the recited weight/area would have been obvious in the art as such is conventional in the art. Moreover, one in the art would have determined, by routine experimentation, to determine a suitable weight/area for the desired end-use of a resultant application.

With respect to claim 8, while Terakawa et al teaches using a finished high-loft web for facing layers of an absorbent article, Terakawa et al does not teach treating the web with a surfactant. However, such would have been obvious in the art because it is well known in the art to form a surfactant treated fibrous topsheet for an topsheet.

With respect to claims 14-15, 17-18 and 20, since: a) it is well known/conventional in the art to bond a lofty web to an elastic fibrous web comprising filaments; claims 14-15 and 17-18 would have been obvious in the art. Moreover, since it is also well known in the art to heat a laminate comprising a fibrous web to a heat-retractable web in order to form a crimped laminate thereby creating an elastic laminate, claim 20 would have been obvious in the art.

6. Claims 9-13, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references set forth in numbered paragraph 7 as applied to claim 1, and further in view of Kobylivker et al (US 6,072,005).

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Since: a) it is well known in the art to provide a film to a lofty crimped fibrous web as exemplified in the teachings of Shelley et al (numbered paragraph 1 and numbered paragraph 55 last 7 lines), and b) it is well known/conventional in the art to bond a fibrous web to an elastic microporous film as exemplified in the teachings Kobylivker et al (abstract; col. 2 lines 41-49; col. 3 lines 36-44; col. 4 line 50 to col. 5 line 4; figure 5).

7. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Panlanco et al (US 2003/0118816) in view of Stokes et al (US 5,622,772) or Shelley et al (US 2002/0089079 A1).

Panlanco et al, drawn to making a lofty fibrous web, substantially teaches the process recited in claim 1. While Panlanco et al teaches using a through-air bonding operation, Panlanco et al does not teach using pattern bonding operation to bond a non-woven web comprising crimped fibers. However, such would have been obvious in the art because it is conventional in the art to either pattern point bond or through-air bond a high loft web comprising crimped bi-component fibers as exemplified in the teachings of Stokes et al (abstract; col. 5 line 66 to col. 6 line 22; figures 2-3) or Shelley et al (abstract; numbered paragraph 46, 51 & 55).

With respect to claims 2-20, these claims would have been obvious in the art for essentially similar line of reasonings as numbered paragraphs 5-6 above.

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

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unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,14 and 24-25 of copending Application No. 10/938,294 in view of either Stokes et al (US 5,622,772) or Shelley et al (US 2002/0089079 A1).

Panlanco et al, drawn to making a lofty fibrous web, substantially teaches the process recited in claim 1. While Panlanco et al teaches using a through-air bonding operation, Panlanco et al does not teach using pattern bonding operation to bond a non-woven web comprising crimped fibers. However, such would have been obvious in the art because it is conventional in the art to either pattern point bond or through-air bond a high loft web comprising crimped bi-component fibers as exemplified in the teachings of Stokes et al (abstract; col. 5 line 66 to col. 6 line 22; figures 2-3) or Shelley et al (abstract; numbered paragraph 46, 51 & 55).

With respect to claims 2-20, these claims would have been obvious in the art for essentially similar line of reasonings as numbered paragraphs 5-6 above.



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This is a provisional obviousness-type double patenting rejection.

**Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richard Crispino can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sam Chuan C. Yao  
Primary Examiner  
Art Unit 1733

Scy  
01-09-06